

REMARKS

I. Claims in the Case

Claim 2 has been amended and claim 31 has been added. Support for these can be found, for example, on p. 28, lines 19-28, of the specification, and in examples 9, 10 and 12. Claim 21 has been cancelled. Claims 2-13 and 20-31 are currently pending.

II. Rejection of Claims 2, 3, 5-8, 20-22, and 24-30 as Obvious over Braude and Pitha

The Action has rejected claims 2, 3, 5-8, 20-22, and 24-30 as obvious over Braude and Pitha. In response, Applicants respectfully traverse. However, in the interest of compact prosecution, the claims have been amended. Applicants submit that the instant amendments render the rejection moot.

Applicants note that the instant claims require specific ratios of one or more digitalis glycoside comprising oleandrin to cyclodextrin. Applicants have reviewed Braude and Pitha and have been unable to determine any indication regarding either (1) utilizing the specific combination of oleandrin, (2) utilizing the instantly claimed ratios of digitalis glycoside/oleandrin : cyclodextrin, and/or (3) utilizing the abovementioned ratios of digitalis glycoside:cyclodextrin for the treatment of a cancer.

Regarding Pitha, Applicants have been unable to identify any teaching or suggestion with respect to oleandrin. Indeed, while two cardiac glycosides family members are specifically mentioned, we have been unable to identify any teaching relevant to the “family” in general or “oleandrin” in particular.

With respect to Braude, Applicants again note that we have been unable to identify any specific mention of cyclodextrin, or any indication that (1) oleandrin should specifically prepared

in combination with cyclodextrin, or (2) oleandrin should specifically prepared in combination with cyclodextrin at the instantly claimed ratios. Further, Braude does not provide any indication that the instantly claimed compositions comprising the specific ratios would be particularly useful for the treatment of cancer.

Applicants submit that the present claims now define subject matter that is patentably distinct from these references, alone or in combination due to both the recitation of both (1) a specific combination, and (2) specific ratios for the combination. Applicants note that there is no basis on the record for selecting oleandrin in combination with amorphous cyclodextrin at the instantly claimed ratios.

In view of the instant amendments, Applicants submit that the rejection is moot. Applicants thus respectfully request withdrawal of the rejection.

III. Rejection of Claims 2, 3, 5-8, 20-22, and 24-30 as Obvious over Braude and Pitha in view of Jones

The Action has rejected claims 2, 3, 5-8, 20-22, and 24-30 as obvious over Braude and Pitha. In response, Applicants respectfully traverse. However, in the interest of compact prosecution, the claims have been amended. Applicants submit that the instant amendments render the rejection moot.

Applicants agree with the Examiner that Jones describes molar weight ratios of digoxin:cyclodextrin of 1:10 to 10:1 (which would correspond to ratios by weight of approximately 1:15 to 15:1).

Applicants note that the instantly claimed ratios by weight of digitalis glycoside / oleandrin:cyclodextrin from between 1:100 to 1:20 are outside of these ranges. Although

digoxin and oleandrin may both be cardiac glycosides, Applicants do not concede that these compounds, which differ in molecular structure and pharmacology, are equivalent. Even if one assumes, *arguendo*, that the recitation of digoxin is equivalent to oleandrin (which Applicants do not concede), then Applicants submit that Jones does not provide a teaching for one of skill to use a different cardiac glycoside in ratios outside of the range taught, for the treatment of a different disease (*i.e.*, cancer) not mentioned in the specification of Jones. Applicants note that in order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on applicant's disclosure or the mere fact that the components at issue are functional or mechanical equivalents. *In re Ruff*, 256 F.2d 590, 118 USPQ 340 (CCPA 1958). Nonetheless, in view of the instant amendments, it is believed that that the rejection is moot.

Applicants submit that Jones does not alleviate the deficiencies of Braude and Pitha or provide any indication to utilize (1) this specific oleandrin:cyclodextrin combination, (2) in the instantly claimed ratios, (3) for the treatment of cancer. Regarding Jones, Applicants note that there is neither any specific mention of treating cancer, nor is oleandrin mentioned anywhere in the document. Jones does not provide any indication that the pharmaceutical preparation, as presently claimed, would be particularly useful for the treatment of cancer. Applicants note that hindsight reconstruction is impermissible.

Nonetheless, in the interest of compact prosecution, Applicants have amended the claims. Applicants submit that the instant amendments render the rejection moot. Withdrawal of the rejection is respectfully requested.

IV. Rejection of Claims 2-11, 13, 20-22 and 24-30 as Obvious Over Braude and Pitha in view of Stella

The Action has rejected claims 2-11, 13, 20-22 and 24-30 as obvious over a combination of Braude et al. and Pitha, further in view of Stella. Stella appears to be cited merely to refer to certain additives and excipients.

With respect to Braude *et al.* and Pitha, Applicants incorporate the arguments in the immediately preceding section.

With respect to Stella, Applicants are unable to identify any teachings there relevant to oleandrin/cyclodextrin combinations, particular ratios, or the use of the formulation as presently claimed in cancer treatment. If the Applicants have missed some relevant teaching in this regard, the Examiner is respectfully requested to identify the teaching relied upon.

Thus, in view of the present amendments, it is believed that these rejections are moot. Withdrawal of the rejection is respectfully requested.

V. Rejection of Claims 2-3, 5-8, 13, and 20-30 as Obvious Over Braude and Pitha in view of Rubinfeld

The Action has rejected claims 2-3, 5-8, 13, and 20-30 as obvious over a combination of Braude et al. and Pitha, further in view of a broad series of Rubinfeld. Rubinfeld appears to be cited merely to refer to sterilization by filtration.

With respect to Braude *et al.* and Pitha, Applicants incorporate the arguments in the immediately preceding section.

With respect to the tertiary references, Applicants are unable to identify any teachings there relevant to oleandrin/cyclodextrin combinations, particular ratios, or the use of the

formulation as presently claimed in cancer treatment. If the Applicants have missed some relevant teaching in this regard, the Examiner is respectfully requested to identify the teaching relied upon.

Thus, in view of the present amendments, it is believed that these rejections are moot. Withdrawal of the rejection is respectfully requested.

IX. Rejection of Claims 2-3, 5-8, 12-22 and 24-30 as Obvious Over a Series of References

Lastly, the Action has rejected claims 2-3, 5-8, 12-22 and 24-30 as obvious over a combination of Braude et al. and Pitha, further in view of a broad series of tertiary references. Stella is cited to refer to additives and excipients, Rubinfeld is cited to refer to sterilization by filtration, and additional references appear to be entered merely to address the patentability of claim 12, directed to various polysaccharides.

With respect to Braude *et al.* and Pitha, Applicants incorporate the arguments in the immediately preceding section.

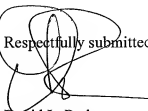
With respect to the tertiary references, Applicants are unable to identify any teachings there relevant to oleandrin/cyclodextrin combinations, particular ratios, or the use of the formulation as presently claimed in cancer treatment. If the Applicants have missed some relevant teaching in this regard, the Examiner is respectfully requested to identify the teaching relied upon.

Thus, in view of the present amendments, it is believed that these rejections are moot. Withdrawal of the rejection is respectfully requested.

X. Conclusion

In view of the foregoing, Applicants submit that the present claims are in condition for allowance, and an indication to that effect is earnestly solicited. The Examiner is invited to contact the undersigned agent with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'David L. Parker', written over the words 'Respectfully submitted,'.

David L. Parker
Reg. No. 32,165
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201

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